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In re Application of CREE et al. :
Application No.: 10/582,313 : DECISION ON
PCT No.: PCT/US04/41434 :
Int. Filing: 08 December 2004 : RENEWED PETITION
Priority Date: 08 December 2003 :
Attorney Docket No.: 345US : UNDER 37 CFR 1.47(a)
For: DIFFERENTIAL ENERGY COMPOSITES :
AND METHODS OF MANUFACTURING :

This is a decision on applicant's renewed petition under 37 CFR 1.47(a), filed in the United States Patent and Trademark Office (USPTO) on 21 September 2007, to accept the application without the signature of joint inventor, Toni Rae Millikan.

BACKGROUND

On 16 February 2007, a Notification of Missing Requirements (FORM PCT/DO/EO/905) was mailed to applicant indicating *inter alia*, that an oath or declaration in accordance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration after the thirty month period was required.

On 16 May 2007, applicant filed a petition along with a declaration, executed by the joint inventor on behalf of the nonsigning inventor. The petition under 37 CFR 1.47(a) in an attempt to satisfy the requirements of 35 U.S.C. 371(c)(4) requested the acceptance of the application without the signature of inventor, Toni Rae Millikan alleging that Ms. Millikan refuses to sign the application. On 16 May 2007, a decision dismissing the petition was mailed to applicant indicating that Petitioner had not demonstrated that a *bona fide* attempt was made to present a *copy of the application papers for U.S. application 10/582,313* to the nonsigning inventor.

On 26 September 2007, Petitioner filed a renewed petition under 37 CFR 1.47(a).

DISCUSSION

As previously stated, a petition under 37 CFR §1.47(a) must be accompanied by (1) the fee under 37 CFR §1.17(g), (2) factual proof that the non-signing joint inventor(s) refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the non-signing inventor(s), and (4) an oath or declaration by each available joint inventor on his or her own behalf and on behalf of the non-signing joint inventor(s).

Petitioner previously satisfied Item (1), Item (3) and Item (4) above.

With respect to Item (2) above, Petitioner has submitted statements of first- hand

knowledge from patent agent Dean Y. Shahriari and patent paralegal Candice P. Dysart. The statements indicate that a letter to the non-signing inventor was sent on 12 September 2007, including a copy of the PCT international application and declaration requesting the non-signing inventor's signature on the application. This correspondence was delivered on 15 September 2007 to the inventor's last known address. As of the date of the petition, no response has been received.

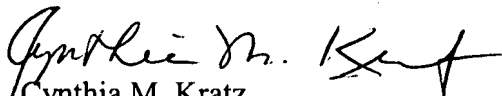
The action taken by petitioner is sufficient to demonstrate that a *bona fide* attempt was made to present a copy of the application papers for U.S. application 10/582,313 (specification, including claims, drawings, and declaration) to the nonsigning inventor for her signature and that Ms Millikan refuses to sign the application papers. Accordingly, it is appropriate to accord the national stage application status under 37 CFR §1.47(a).

CONCLUSION

The petition under 37 CFR §1.47(a) is GRANTED.

The U.S. Designated/Elected Office is authorized to accept the application as a 37 CFR 1.47(a) application using the declaration filed 17 May 2007. The application has an international filing date of 08 December 2004 under 35 U.S.C. 363, and a date of 16 May 2007 under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventors at their respective last known address of record. Also, a notice of the filing of this application will be published in the Official Gazette.


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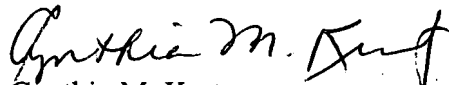
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Dear Ms. Millikan:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. § 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.


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